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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 ABU DHABI,

4 Plaintiff,

5 v.

08 CV 7508

6 MORGAN STANLEY,

7 Defendant.

8 -----x

New York, N.Y.

9 May 16, 2011

10:40 A.M.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

14 FOR PLAINTIFFS:

15 DANIEL DROSSMAN, ESQ.

16 LUKE BROOKS, ESQ.

17 FOR DEFENDANTS:

18 DEAN RINGEL, ESQ.

19 TAMMY ROY, ESQ.

JASON HALL, ESQ.

20 JAMES P. ROUHANDEH, ESQ.

ANTONIO PEREZ MARQUES, ESQ.

21 MEGHAN H. SULLIVAN, ESQ.

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1 (Case called)

2 THE COURT: Okay, good morning, everyone.

3 There's been a little bit of letter writing recently.
4 I gather a lot of letter writing to the special master and some
5 other letter writing to me regarding request for judicial
6 assistance. If you put all three together, a small amount of
7 letter writing to me, the enormous amount of letter writing to
8 special master and imposing all that judicial assistance
9 request. You really like writing letters, I guess. But you
10 are inundating both the judicial system and the special master.
11 I've never seen anything quite like it in terms of enjoying
12 writing letters back and forth.

13 Before me is a three-page single-spaced letter dated
14 May 10 from Mr. Rouhandeh, using one of the smaller types I
15 have seen in a long time, but asking for leave to file -- I'm
16 sorry, I guess -- oh, sorry. Asking the Court to reconsider
17 its January 12th, 2011 order that granted plaintiff's leave to
18 amend the complaint. The basis for this four-month tardy
19 request for reconsideration is that, as far as defendants are
20 concerned, these new plaintiffs are simply not meeting their
21 discovery obligations, and not meeting it in a timely manner.

22 Then, Friday, a response came in from Mr. Brooks and
23 he couldn't resist calling this motion nothing short of
24 outrageous. Usually, I get one side saying they're shocked by
25 the conduct of the other. And the other side saying it is

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1 outrageous. Actually, if you would skip shock and outrage, it
2 you make it easier reading for me if you left off such words.

3 Obviously outrageous, because defendants should know
4 better than to know they're not going to get their case
5 dismissed under rule 47, although a court order is violated,
6 And all they have to do is write a three-line letter saying we
7 need a discovery conference. We think discovery is in default.
8 And that's what I had said on a phone call that we had recently
9 on one of the other issues, I forgot what it was. We were all
10 on the phone on some issue last week. And I said I don't think
11 you seriously are telling me I should reconsider a January 12
12 order in May, I think you are saying if plaintiffs don't
13 cooperate with discovery, then the case should be dismissed for
14 failure to cooperate with discovery. There's plenty of
15 precedent for that. If plaintiffs don't cooperate in
16 discovery, over the many years I am sure I have dismissed 10
17 plaintiffs cases for failure to cooperate with discovery, so
18 that's a perfectly reasonable motion. If, indeed, plaintiffs
19 are not cooperating in discovery.

20 So I guess we're just here for a standard old
21 complaint session about who is not doing what in discovery.

22 One of the things that the plaintiffs say in their
23 letter, is they're kind of waiting for this negotiation to end
24 on the search term, because they don't want to go through I
25 guess thousands of documents more than once. They don't want

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1 to have one electronic search and then another electronic
2 search. And that sounds right to me. The defendants took the
3 same position in the previous search of their records. They
4 didn't want to do repetitive runs through the same data set.
5 They want to do it once with the right search terms. And that
6 is still being negotiated and/or ruled on. And/or, you know,
7 they are not ready to run the search.

8 So that's one defense to it. I don't know what the
9 other defenses are.

10 So do you want to be heard, Mr. Rouhandeh, after
11 having had a chance to see the plaintiffs reply?

12 MR. ROUHANDEH: Yes, your Honor.

13 Just briefly for the record, the reason we sought
14 reconsideration was simply that we thought there was a
15 misrepresentation of the Court in the letter, which we didn't
16 know at the time. In fact, we didn't know until after the time
17 period for reconsideration lapsed, that's why we brought it
18 that way. Plus, I think the Court reconsidered an earlier
19 order, and obviously there were distinctions, but there was an
20 order that was entered in object of one year and reconsidered
21 in July. We don't need to belabor that point, I just wanted to
22 put it on the record. But there really hasn't been a
23 negotiation on search terms.

24 THE COURT: I thought there was. I thought it
25 was ongoing with Special Master Nettle, and I remanded it. The

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1 special master surely reached out to the two sides and has
2 tried to talk about what to do now.

3 MR. ROUHANDEH: He --

4 THE COURT: Surely he knows that whatever it was that
5 he ordered before produced an overly large hit rate, so to
6 speak, and it's unworkable. And he basically said re-do this,
7 narrow it, that's why you are there. And I thought he was
8 trying to do exactly that.

9 MR. ROUHANDEH: He is trying to do that. I guess I'm
10 taking issue with what they have said, that they have actively
11 conferred with the defendants to reach resolution to the search
12 terms.

13 THE COURT: I assume he is trying to narrow it.

14 MR. ROUHANDEH: Well, on the second set of plaintiffs,
15 they waited six weeks. We asked them what search terms were
16 you using. They wouldn't tell us, we had to write to the
17 Court. This time, we asked what search terms and custodians
18 are you using. We were told, don't hold your breath, because
19 if you did you'd suffocate.

20 THE COURT: Oh, that's a new one to me.

21 MR. ROUHANDEH: Yeah. I just think that their
22 obligation is to actually tell us what they are doing.

23 With the first set of plaintiffs, it worked where we
24 told them what search terms we were going to use. They told us
25 what search terms they were going to use. There were some

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1 disagreements about that. Both parties ran their search terms
2 did their searches. On the second set, we asked them what
3 search terms they're using. And we found out, after the fact,
4 six weeks later, they only used Chaney and Griffin. And we
5 said they should, they have to go beyond that. The Court
6 appointed a special master, said I can give you some guidance,
7 you gotta go beyond Chaney and Griffin.

8 The idea that the plaintiffs are sitting here waiting
9 to work something out with the special master, we don't think
10 is correct, either. In the objections they sent to your Honor,
11 they made clear they objected to any searches beyond Chaney and
12 Griffin. That was the relief they asked for.

13 THE COURT: They didn't get that relief.

14 MR. ROUHANDEH: They haven't yet, they are still
15 persisting in that.

16 THE COURT: You're not going to get that, Mr. Brooks.
17 It's going to be beyond Chaney and Griffin. Now they know --
18 sit down, please. Now they know it's going to be beyond Chaney
19 and Griffin.

20 Okay, go ahead.

21 MR. ROUHANDEH: So as to the research, having to do
22 the search twice, by not telling us what terms they were going
23 to use in December, they set themselves up for that. Because
24 we would have said, no, no, don't search just Chaney and
25 Griffin. If you have a dispute, let's go to the Court and get

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1 that resolved. So, instead, they just did that, didn't tell
2 us, and now they are moving forward.

3 So for this third set of plaintiffs, their position is
4 we're not going to do anything until we get it all worked out
5 and they object, they basically said at the last conference
6 with the special master, we're not agreeing to anything. And I
7 didn't know whether that meant -- to any of these searches, I
8 didn't know whether that meant we don't want to be plaintiffs
9 if we have to do all of this document production, or whether
10 they're going to appeal any order from the special master to
11 your Honor.

12 THE COURT: Well, they can't appeal further than me.

13 MR. ROUHANDEH: Right.

14 THE COURT: At some point we've got to either get the
15 search terms and live with them, or drop out as plaintiffs.
16 It's really very simple. I can understand the plaintiffs
17 saying, you know what, I don't want any part of this, it's too
18 burdensome, it's too expensive, it's too distracting, that's
19 fine, we say goodbye to that particular plaintiff. So at some
20 point the universe of search terms has to be decided, has to be
21 run, and has to be produced. This is not really rocket
22 science. I don't understand why it's so combative.

23 MR. ROUHANDEH: Well, it is -- it is, at this point,
24 so combative, because --

25 THE COURT: I don't understand why.

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1 MR. ROUHANDEH: Because we are not getting -- we don't
2 think we're getting cooperation in discovery. We're not being
3 told what they are doing and when they are doing it.

4 THE COURT: The cooperation is the latest word in
5 discovery. Everybody is cooperating. Are you the only two
6 lawyers left in this country that aren't getting it? About the
7 need for cooperation. And who said that about, "don't hold
8 your breath, if you do you'll suffocate." Who said that?

9 MR. BROOKS: I did.

10 THE COURT: That was a terrible comment.

11 MR. BROOKS: It was an offhanded remark. And there
12 has been many offhanded remarks made during these meet and
13 confers, and I'm not repeating them for your Honor because --

14 THE COURT: All right. Yeah, well, I don't like that
15 one, it's like saying go die. It's terrible.

16 MR. BROOKS: What we were talking about is, look, we
17 can't perform these piecemeal searches because it is very
18 expensive.

19 THE COURT: Right.

20 MR. BROOKS: And so what we had told them is once this
21 search term issue is resolved, which we are actively pursuing
22 to resolve. And just for the record, we never told the special
23 master we're not willing to do anything. We had a lengthy meet
24 and confer with the special master. I think it lasted for an
25 hour and a half. If we had told him we're not willing to do

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1 anything, then I don't know what there was to talk about,
2 because we went back and forth about the propriety of various
3 search term combinations.

4 THE COURT: You obviously adjusted to doing more than
5 Chaney and Griffin.

6 MR. BROOKS: Absolutely. We went ahead and said to
7 the special master, why don't we go ahead and run searches for
8 these various search terms within 15 words, and within 45
9 words. And we committed to providing him with the data on
10 those searches. So I'm not sure what Mr. Rouhandeh is
11 referring to when he says we're not going to do anything, when
12 we are talking about multiple searches beyond Griffin and
13 Chaney, when we're going to supply the special master with new
14 data relating to the number of hits attained. We're actively
15 working --

16 THE COURT: He did say he was waiting to hear from one
17 of your experts, I had forgotten, something like that. But it
18 was your side or their side --

19 MR. BROOKS: I think it was our side.

20 THE COURT: -- but he was waiting to hear back from
21 somebody.

22 MR. BROOKS: Right. Our vendor had said -- we said
23 can you please do these 15 and 45 searches. And we asked our
24 vendor to do it.

25 THE COURT: The reason I know this, is because I

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1 e-mailed him yesterday to see if he wanted to join this
2 conference. He was not able to. He is somewhere in Delaware
3 doing something else. He said I'm waiting to hear back from
4 somebody's vendor.

5 MR. BROOKS: What was distressing to us, is when we
6 got back on the call with the special master, after you had
7 remanded the report and recommendation number three --

8 THE COURT: Yeah.

9 MR. BROOKS: -- is we said, look, some of these search
10 combinations like Morgan Stanley within the same document as
11 investment when you ask six banks to do this search, they are
12 just unworkable. Or S&P within the same document as rating, it
13 is just unworkable. And defendants said, no, no, no, we think
14 that is absolutely proper, we're not going to bend, we want
15 those searches run.

16 THE COURT: I mean the point of the special master was
17 not to listen to we're-not-going-to-bend language, but just
18 decide what it should be and make it reasonable and be done
19 with the problem.

20 Do you do your conferences separately? Do you speak
21 to him separately for an hour and a half, or defense was on the
22 phone.

23 MR. BROOKS: All of the parties were on the phone.

24 THE COURT: Always. So when you were on the phone an
25 hour and a half, the defense knows you were on the phone for an

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1 hour and a half.

2 MR. BROOKS: Right.

3 THE COURT: So Mr. Rouhandeh, why do you say they
4 aren't talking to the special master. Your side was on the
5 call for hour and a half.

6 MR. ROUHANDEH: We were saying they won't meet and
7 confer with us, and they take a hard-line position, which is --
8 today was the first time I heard that they have actually said
9 that they would produce documents beyond Chaney and Griffin.
10 We hadn't heard that before.

11 THE COURT: What was the hour and a half about?

12 MR. ROUHANDEH: It was about the trying to restrict
13 some of the search terms that hit broader --

14 THE COURT: I know if they were trying to restrict it,
15 they were well beyond Chaney and Griffin.

16 MR. ROUHANDEH: Well, no. No, it was the special
17 master trying to restrict it. In a response to what he said,
18 they said, well, we're not going to -- special master is trying
19 to get an agreement between the parties so that he doesn't have
20 to issue a report and recommendation and then wait 20 days to
21 object. They're not agreeing to that. And to say we are
22 unwilling to get rid of any search, that is misleading.

23 THE COURT: I'll amend the 20-day rule, make it 48
24 hours. This is silly.

25 MR. ROUHANDEH: That is a request that we have asked

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1 for.

2 THE COURT: I'm sure the plaintiff will agree. You
3 don't want a 20-day delay every time he has a report. These
4 reports, I read these reports in a minute. I go to the last
5 page. I read three reports this morning. I must tell you, I
6 only go to the end to see if the deposition is allowed or not,
7 where it is going to be held or not. I don't care about all of
8 those citations and recitations. It's meaningless. I can read
9 them in a minute, therefore you can object to them in 48 hours
10 or less.

11 MR. BROOKS: As you know, as plaintiffs, we want to
12 move this case forward. We're the ones who want to get on to
13 trial.

14 THE COURT: I assume you would be happy to change rule
15 to 48 hours.

16 MR. BROOKS: Maybe we could have a few more, say
17 three, four days to object; something like that.

18 THE COURT: Seventy-two hours.

19 MR. BROOKS: Something like that; something like that.

20 THE COURT: Not something like that, the new rule, the
21 order is hereby amended, all objections to reports and
22 recommendations are due in 72 hours. Okay, we took care of
23 that.

24 Now, where are we up to on these darn search terms.

25 MR. BROOKS: Look, here is our --

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1 THE COURT: When do you expect to come to a ruling on
2 here, soon?

3 MR. BROOKS: Our hope is soon. What's -- we're not
4 particularly sanguine, because on the last call, Mr. Rouhandeh
5 said we don't see any burden after we provided this data and --

6 THE COURT: Well, I have already remanded report
7 recommendation three. That was too burdensome. That was
8 clearly overbroad. If it was producing the number of hits it
9 was producing, I didn't like it. And you're kind of stuck with
10 me. You can't get any higher right now. So that's the end of
11 the matter, that was too broad.

12 All right. So I know it's going to be less than that.
13 Doesn't matter what Mr. Rouhandeh said because the judge,
14 namely me, has said that was too broad. So I know it's going
15 to be less than the original and more than Griffin and Chaney.
16 So I know I know it is somewhere between those extremes.

17 MR. BROOKS: Sure. And I think that what's telling is
18 the -- you know, the footnote number 4 in our brief, where we
19 said --

20 THE COURT: In your brief?

21 MR. BROOKS: Letter. In our letter.

22 THE COURT: Okay.

23 MR. BROOKS: Footnote number 4 where we say --
24 actually, number 5 on page 3, where we say, look, you know, we
25 performed these broad searches. Out of these broad searches

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1 we're looking at 2.5 percent that capture Chaney and Griffin.

2 Now, obviously this case is broader than Chaney and
3 Griffin. We understand that. They have said it. Everybody
4 agrees.

5 THE COURT: You have said it.

6 MR. BROOKS: But it's not 98 percent everything else
7 and 2 percent Chaney and Griffin. And I think your Honor would
8 agree --

9 THE COURT: But we're well beyond the "everything
10 else." I have sent R&R 3 back. That means I rejected it. The
11 defense is not dumb here. They are like eight of the brightest
12 lawyers I have ever seen. They got the message. They know I'm
13 not going with it. Right, Mr. Rouhandeh?

14 MR. ROUHANDEH: Absolutely.

15 THE COURT: Yeah, see, they knew. They were so smart
16 that they knew. So we know what is left and what it was. And
17 I know it is more than Chaney and Griffin. Now it's just a
18 matter of refining.

19 How much longer do we think that is going to take?

20 MR. ROUHANDEH: We had a conference on Tuesday with
21 the special master and he asked for the data. Which we
22 thought -- it was not their idea, it was the special master's
23 idea. It was a very good idea to take a search that uses "and"
24 and replace it with 15 and 45 to see the number of hits. I
25 don't believe we have that data yet.

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1 THE COURT: When do you think he is going to get that
2 data?

3 MR. DROSSMAN: Three of the plaintiffs that we are
4 using as sort of exemplar plaintiffs.

5 THE COURT: Of course, yes.

6 MR. DROSSMAN: I believe that two of them we'll have
7 the data today.

8 THE COURT: Okay.

9 MR. DROSSMAN: Last I was informed, Judge, and I have
10 been travelling. But the third, which is a very large data set
11 that needed to be indexed in advance of actually running the
12 searches will be at some point this week, but a little bit
13 later.

14 THE COURT: So some of that information will be in the
15 special master's hands today. Some will be here before the end
16 of the week. It sounds like, with some luck, you'll have the
17 recommendation no later than a week from today. And of course
18 I'll drop an e-mail saying I'm deeply hopeful to have a
19 recommendation by the 23rd as to the search terms. And then I
20 hope you can live with it and run the search and produce the
21 stuff.

22 Now, how long will it take to do that?

23 MR. DROSSMAN: Obviously, Judge, it depends on what
24 the volume is.

25 THE COURT: Yeah, but you know what the data set is.

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1 Now, it's just the number of terms.

2 MR. DROSSMAN: Well, right. But the documents that
3 were yielded by the first terms, which I know we're not going
4 with, but were 288,000 documents. Not pages, not gigabytes
5 288,000 documents.

6 THE COURT: For all of the --

7 MR. DROSSMAN: For one plaintiff. For one plaintiff,
8 Judge. And so, obviously, you know, we have to get the
9 documents from -- we'll run the searches, we'll get the
10 documents. We'll have to do a review. We'll do it as soon as
11 we possibly can, your Honor.

12 THE COURT: Do you have a 502(d) order in place here?

13 MR. DROSSMAN: I don't believe so.

14 THE COURT: Why don't you?

15 MR. DROSSMAN: I don't know, your Honor.

16 THE COURT: You don't know. Well, why don't you
17 submit one, I'll sign it. Period.

18 No reason you don't want one. That helps with review.
19 I really have never seen a case where the lawyers don't want a
20 502(d) order. There is nothing bad about it, only good. Do
21 you have a feeling against those orders?

22 MR. DROSSMAN: To be honest, I don't know what a
23 502(d) order is.

24 THE COURT: Oh, the new federal rule of evidence
25 502(d) that says: If inadvertently something is produced.

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1 MR. DROSSMAN: We do have a protective order in the
2 case that provides for --

3 THE COURT: This is even better. Because it protects
4 you in any litigation, State or federal, anywhere else. Once I
5 put my name on it, you're totally protected against any
6 inadvertent waiver. So people who have 502(d) orders in place
7 are a little more casual to review, because it doesn't have to
8 be evaluated for having been a good review. Takes you off the
9 hook of 502(b) in a helpful way. Maybe you can get through the
10 review a little bit more quickly.

11 MR. DROSSMAN: We hope so, Judge. We really hope that
12 we can get through this stuff very fast.

13 THE COURT: That's what I'm saying, especially if you
14 have that order in place, which you ought to draft and submit.

15 MR. DROSSMAN: We'll draft and submit one.

16 THE COURT: You should.

17 MR. DROSSMAN: We will, your Honor. And we'll do it
18 as fast as we can.

19 THE COURT: Just curious, I want to do a survey.

20 Defense bar back there, do you have 502(d) orders in
21 most big cases nowadays? If you do, raise your hand.

22 THE COURT: I think we have not done a good job of
23 publicizing 502(d).

24 MR. ROUHANDEH: I think we're all still putting it in
25 the protective orders. We're putting the old provision in

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1 there, where I think we should asking for the order.

2 THE COURT: Oh, you should be. Really, we have not
3 done a good enough job if the cream of the defense bar isn't
4 using it. This is a problem.

5 Okay. Anyway, back to the point. So, the point is
6 it's going to be lots produced, then you have to review it,
7 then you have to produce it.

8 MR. DROSSMAN: I just don't want to make a commitment
9 on time without knowing what the scope of the search and the
10 hits will be. But, I can assure the Court --

11 THE COURT: How many new plaintiffs are there?

12 MR. DROSSMAN: Well, there are essentially 12, your
13 Honor. Or 11, actually, that we're going to have to run new
14 hits on, new searches on. Some of them have done the Chaney
15 and Griffin and produced those documents. This set has not.
16 Obviously, both sets are going to have to go back and run
17 whatever the new search is. And so I think it's 11, because
18 there is one --

19 THE COURT: Which was the one that turned up the
20 288,000 or something?

21 MR. DROSSMAN: Butterfield, your Honor. Which is not
22 one of the ones here. It is one of the second set of added
23 plaintiffs.

24 THE COURT: Oh, I see. Not the third set anyway.

25 MR. DROSSMAN: Right. We have one of the third set,

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1 Commerce Bank, in the sort of sample that we're using, as well
2 as Florida, FSBA. And so those two are from the additional
3 plaintiffs.

4 THE COURT: That's the one that, as of the date of Mr.
5 Rouhandeh's letter, had produced all of two documents.

6 MR. DROSSMAN: Well, they haven't run the Griffin and
7 Chaney searches because, as we explained to the Court, we
8 didn't want to run these searches and go back and research.
9 And the process was ongoing as we received their document
10 requests. And we're responding to them on -- you know, the
11 search is just taking longer.

12 THE COURT: Let me ask the lawyers here.

13 Once the search terms are in place and, hopefully,
14 without appeals and rulings and all that, and run, and
15 documents produced, then will plaintiffs have met their
16 obligations. Is that essentially what is missing, is the big
17 document production for every one of the new plaintiffs.

18 MR. ROUHANDEH: Absolutely. We can't really begin any
19 of the depositions.

20 THE COURT: Right. So then you get this big bunch of
21 documents and then you're ready to depose these people.

22 MR. ROUHANDEH: Yes. And there may be followup
23 requests. And we may learn from the first time, deep into this
24 case, that there is an investment advisor we didn't know about
25 in followup discovery. But we don't have anything to be able

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1 to even start digging our teeth into and looking at.

2 THE COURT: Right. What are the numbers we're up to.
3 How many plaintiffs of the original group, how many is in the
4 second group, and how many in the third.

5 MR. DROSSMAN: Fifteen, total.

6 THE COURT: Fifteen, total?

7 MR. DROSSMAN: Or 15 or 14.

8 MR. BROOKS: It's 15.

9 MR. ROUHANDEH: It's three in first group, five in the
10 second, and six in the third group.

11 MR. DROSSMAN: I don't know if you are counting SCI as
12 the same.

13 There are 15, total, Judge.

14 THE COURT: Okay. I have 14. Three, five, and six?

15 MR. ROUHANDEH: It's actually, three, six and six.

16 THE COURT: Three, six, and six. What that means is
17 almost half the case, or maybe more, I don't know where you
18 stand on the second group. But half of the case is still in
19 the early stages of discovery, meaning documents are not yet
20 produced and depositions are surely not taken. I understand
21 you would like to get to trial, but apparently half of these
22 plaintiffs are in early stage of discovery.

23 MR. DROSSMAN: No depositions have been taken --

24 THE COURT: Well, the original three have, because
25 they're going for round two I saw on the R&R today.

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1 MR. DROSSMAN: Sure. They took 30(b)(6) depositions.
2 And they have now taken third-party depositions. They have not
3 taken the employee depositions that they intend to take of the
4 originals.

5 The second set, my understanding is that they have
6 wanted to wait until, even though we have produced the Griffin
7 and Chaney, they wanted to wait until this search term issue is
8 resolved before beginning depositions of the second set. And
9 obviously the third set, they don't have the documents to do
10 it.

11 Your Honor, it was not our hope that this would take
12 as long as it has taken. You know, we just -- we had to make
13 an election whether we were going to object to this very, very
14 broad search or not, Judge. And we --

15 THE COURT: Right.

16 MR. DROSSMAN: -- spent time explaining to the special
17 master just how big it was, the searches that the defendants
18 were asking for. But we didn't apparently get through to him,
19 and so now we're back for a second round. I mean the Court
20 sent this to the special master in February. We're not
21 intending to drag our feet. We really didn't want it to take
22 this long. We would like to get through the plaintiff's
23 discovery and get this thing over with.

24 THE COURT: I would, too, because someday we have to
25 be in motion stage, which is a great big time toller, the

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1 inevitable motion for summary judgment where the defense looks
2 you straight in the eye and says there is no issue of fact
3 whatsoever, all right. And then if we ever get passed that,
4 someday there is either going to be resolution or trial. So
5 it's a long way out, long way out.

6 MR. ROUHANDEH: If I could just -- they said they
7 couldn't persuade the special master. The special master
8 didn't see the hits until they waited the last day, 20 days,
9 and sent the objections to your Honor. I believe that was the
10 first time that he knew the number of hits. And he put in the
11 mechanism which is if anything hits more than 30 thousand, come
12 back and tell him. They didn't do that. They, instead,
13 objected to your Honor, said we don't want to produce anything
14 beyond Chaney and Griffin. So there are lots of hits, 288,000
15 documents. Despite the fact that the defendants have all
16 reviewed more, and in many cases produced more in that number
17 of documents, we have said, okay, well, let's go back and look
18 at this before you take a search off the table and just throw
19 it away, look at some of the documents. Sample some.

20 Undoubtedly, there are going be lots and lots of
21 documents that we do not want, that we don't care about. But
22 the only way that you can focus on the ones that you want and
23 get rid of the ones you don't want, is to see what they are
24 hitting. Because they could hit all sorts of inadvertent
25 things. That helps you refine the search. And so that's what

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1 we think should be done. The way the special master has said
2 is, well, let's just, instead of using "and," so it's anywhere
3 in the document, use 15 on 45. That may solve the issue, it
4 may not.

5 But what the real issue here is, we need -- when he --
6 when the special master issues that order, we really need a
7 deadline for their production. Because what's happened so far
8 is if something -- if they have been ordered to produce
9 something, they say we can't do anything until it's all worked
10 out. And I guess what that means is we have 12 plaintiffs who
11 we can't really start the depositions as to those plaintiffs,
12 because they're not going to want people deposed twice, and we
13 don't want to depose people twice.

14 And our principle concern in writing this letter and
15 coming here is, we're concerned that the delay in the case is
16 going to substantively affect us. Because, at the end of the
17 day, it's just human nature that everybody wants to get things
18 done at the end. And if the case drags on too long, and we get
19 the documents and we're -- you know, we'll work as hard -- we
20 have three law firms and work as hard and fast as we can. But
21 we need time to look at the documents, see if there are any
22 followup requests, and do the depositions. And that's the
23 process we're afraid is going to get short shrift. And so the
24 solution is to move it along with deadlines and with the
25 special master giving a recommendation with the deadline in it,

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1 your Honor, considering it, and then producing those documents
2 in a timely fashion. And then giving us a fair shot to take
3 the deposition.

4 THE COURT: Why can't we schedule all that out now?

5 MR. DROSSMAN: The sticking point, your Honor, on how
6 long it is going to take for the production, is what the
7 production is going to look like.

8 THE COURT: Yeah, but it's still per plaintiff. It's
9 not that hard to estimate.

10 MR. DROSSMAN: Well, your Honor --

11 THE COURT: Even when the -- even when the overbroad
12 search produced 288,000 documents, for that plaintiff, how long
13 did it take to cull the 288. I mean in the electronic age,
14 what did it take. Less than a week? Once they applied the
15 search terms through the data set and it produced 288, how long
16 did it take to do that? Probably days.

17 MR. DROSSMAN: I think that the process of indexing
18 and setting documents aside is a shorter process. And the
19 larger piece of the process --

20 THE COURT: Is the review.

21 MR. DROSSMAN: Is the review.

22 THE COURT: I understand that. But that's where the
23 lawyer resources come into the picture. So I still say if the
24 final parameters are set no later than next Monday, the 23rd of
25 May, then it sounds like whatever the run produces will be in

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1 your hands no later than the 31st of May. Because it is just
2 days to run it. Then you need a period of time to review it.
3 What do you need? Three weeks? Four weeks? Two weeks? What
4 do you think? I mean I want to schedule this out, it is to
5 your benefit.

6 MR. DROSSMAN: I know, your Honor. Just to put it in
7 the context, Moody's just did a recent review and production of
8 documents that was, apparently, they reviewed 50,000 documents.
9 And the Court had ordered them to review and produce by
10 April 1st, giving them two months. They appealed --

11 THE COURT: Two months from when?

12 MR. DROSSMAN: Two months from February 1.

13 THE COURT: From when? From what stage of the effort?

14 MR. DROSSMAN: From the stage of identifying the
15 searches that would be run.

16 THE COURT: Well, you're going to be beyond that.
17 We're going to be, as I said, May 31st sounds to me like the
18 document will be in your hands for review.

19 MR. DROSSMAN: But just to complete my thought, Judge,
20 it took them 3 months to do it, to do the review and
21 production.

22 THE COURT: I don't look at it that way, Mr. Brooks,
23 you're wasting your breath. And I'm not going to go through
24 the second half of that and tell you what might happen if he
25 waives too much of it. I wouldn't want it to fall into the air

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1 that Mr. Drossman fell into. But anyway, on May 31, if you
2 have the actual documents for review, and you should have them
3 on electronic review platform, it shouldn't be in a box
4 anymore. Then you start putting your team on review. And
5 there is no reason you shouldn't have a rolling production,
6 which I know I said in this case, particularly I remember with
7 Ruiz, I said don't wait until it is all done, start rolling it
8 all out. Which is true. Review one plaintiff, and another,
9 and then another, you don't need to wait until plaintiff 12 to
10 produce one through six, right. So I would think that in a
11 rolling production, you would be able to produce throughout
12 June and maybe complete it by say July 8th. I think that's
13 plenty.

14 MR. DROSSMAN: I think that's going to be very
15 difficult, your Honor. And we'll do our best --

16 THE COURT: Well, it's summer. You can get lots of
17 law students.

18 MR. DROSSMAN: I want to say one thing.

19 THE COURT: Yes.

20 MR. DROSSMAN: So that certain of the collections can
21 be done, I think, in a week or a week and a half time frame.

22 THE COURT: I'm giving five weeks for the whole thing.
23 And you just get organized. You do it by plaintiff. You get
24 teams together. I wasn't kidding about law students. It is
25 the summer. They are better than off-shore. They have a

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1 better idea of what relevance and privilege are about.
2 Honestly, people outsource these things to the most terrible
3 places. But July 8th, seems to me, all documents should be in
4 defendant's hands. You would be setting up depositions. You
5 would have July, August, September. That's enough, three
6 months to complete all depositions. I don't know how this
7 compares to the old schedule, but I'm roughing it out and
8 saying by September 30th you would have completed all of the
9 depositions.

10 What's the defense reaction to that, September 30
11 complete them all. All.

12 MR. ROUHANDEH: Yes, your Honor. Just by way of
13 background, it's not really a disagreement with that. Twice
14 before when the Court set a deadline, we had 4 months from the
15 date of production. We think we can probably do it in 3 months
16 to review all of those documents.

17 THE COURT: You also have summer associates. It's a
18 good time. You have to keep them all busy, learn a lot.

19 MR. ROUHANDEH: The only hesitation to -- and not just
20 saying thank you, we'll do it, was that sometimes there might
21 be some followup document discovery. Which sometimes delays --
22 if they produced everything on July 8 and we got the running
23 start, okay. But if -- if --

24 THE COURT: They'll produce it before then, because
25 they are going to be doing it on a rolling basis, I hope. You

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1 know, they are going to focus and say we're going to do the
2 first two plaintiffs right away. You'll have them. Two more
3 the next week. Two more the next week. You gotta do it,
4 Mr. Brooks. You want this big case, I know it is painful. But
5 somebody has to do that document review. I'd volunteer myself,
6 given the salaries, but I have a few other things to do. I
7 can't do it. But anyway.

8 MR. ROUHANDEH: Past experience, doing this many
9 times, August is a very hard month to take depositions. I feel
10 we're going to do all of them in September.

11 THE COURT: We can't rule out July and August. You
12 just have to spread them around. I know the foreign people,
13 they are smart enough to take one-month holiday. They don't
14 work like Americans. Americans are a little nutty about work.

15 MR. ROUHANDEH: Most of these plaintiffs are --

16 THE COURT: No, but then I was just looking.
17 Florida State Board of Administration, Pennsylvania Public
18 School Employees, National Agricultural Cooperative. You have
19 a lot of Americans. Americans are not good at vacationing.
20 Very poor.

21 MR. ROUHANDEH: Three of the 12 are U S.

22 THE COURT: I must have found those three.

23 MR. ROUHANDEH: Yeah.

24 MR. DROSSMAN: The last is actually Korean, Judge.

25 THE COURT: The last is Korean?

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1 MR. DROSSMAN: The National Agricultural Collective.

2 THE COURT: Korean. I don't know how good they are at
3 vacationing. I know Europeans are very good.

4 MR. BROOKS: New Zealanders don't take off August.
5 They flip their schedule. They take off January.

6 THE COURT: Anyway, I realize the difficulty, but it's
7 matter of scheduling. You have to focus on who can do what
8 when. So do the Americans in August. Do the others in July
9 and September. But that's a schedule. It's at least, you
10 know, a hope of getting something done. I'll issue it as an
11 order.

12 What else? So, then, after that would be concluded,
13 what is left to do before we talk about this inevitable motion
14 that you're gearing up for?

15 MR. ROUHANDEH: Experts.

16 THE COURT: Why does it have to be done before the
17 motion? I'm of the firm view that most experts have nothing to
18 do with the summary judgment motion. Either there is an issue
19 of fact or not. Experts are for trial. They are not for
20 motions. They always say the opposite of each other. They
21 indicate issues of fact anyway. So, really, I don't see how
22 they are going to help me on summary judgment motion. But some
23 do. You know, some experts don't really clearly don't relate,
24 let's say damages expert. That doesn't make me do summary
25 judgment. Some of them you might feel do relate. You have to

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1 look at them one by one. And we can put off this whole group
2 after the motion, because they don't relate, they are trial
3 experts.

4 MR. ROUHANDEH: That might work. We might actually
5 have agreement on that, I hesitate to say. It is possible we
6 might have an agreement on that. I do think loss causation
7 experts might be one that both sides --

8 THE COURT: Maybe. Is the Supreme Court getting their
9 work done? Have they figured out loss causation as a term yet,
10 or not. Have we got the opinion down?

11 MR. ROUHANDEH: I don't think it's down.

12 THE COURT: Not down.

13 Well, all right but it's almost June. We're going to
14 know in this case where we are in loss causation.

15 MR. DROSSMAN: It may not affect this case, Judge,
16 just because we don't of the official market here. We're not
17 on --

18 THE COURT: Well, that's true. Let's see what they
19 write.

20 MR. DROSSMAN: We can see, of course. I tend to agree
21 with Mr. Rouhandeh that if they're going to move on loss
22 causation -- and I think they have indicated throughout this
23 case that they have planned to -- then we may need experts.

24 THE COURT: I want to see that Supreme Court says, I'm
25 serious. They may give us review of loss causation at this

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1 stage of the game.

2 Let's just think where we're up to. So where is the
3 plaintiffs discovery efforts with respect to the defendants?

4 MR. DROSSMAN: Well, so, that's why I stood up, your
5 Honor.

6 THE COURT: All right.

7 MR. DROSSMAN: Because, we have had some staggered
8 discovery cut-off situations with the defendants as well.
9 Moody's discovery is ongoing. We got their document production
10 on April 29th. And so we've we submitted, Friday, I believe,
11 proposed schedules to the special master for a discovery.
12 cutoff. And our proposal was that within two months of
13 April 29th, we would finish Moody's discovery. We also have
14 some outstanding documents where we had made --

15 THE COURT: Is that in dispute? Why isn't that a
16 reasonable proposal, just agree to it. Who needs a special
17 master for that? I think they are agreeing, are you Ms.
18 Sullivan?

19 MS. SULLIVAN: Yes, your Honor. Our understanding is
20 that plaintiffs have until July 1 to finish depositions.

21 THE COURT: So that's it, that's done.

22 MR. DROSSMAN: Sure.

23 There is another issue, your Honor. There are some
24 outstanding motions that we made back in January to the special
25 master, that relate to underlying assets that Morgan Stanley

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1 arranged for the SIB. We have -- we're waiting for a report
2 and recommendation on that. We thought that we had an
3 agreement, fundamentally, that we would be able to take
4 depositions relating to those topics after May 1st. That was
5 omitted from the proposal that Morgan Stanley sent. And so if
6 the Court's going to issue a schedule, we just want to make
7 sure that we can take depositions relating to essentially
8 outstanding discovery requests, where we haven't received the
9 documents yet.

10 THE COURT: I don't know how to respond to that.
11 That's sort of sub judice.

12 MR. ROUHANDEH: Before the special master. Exactly
13 what I was going to say. Whether they get it and what the
14 consequences.

15 THE COURT: I just have to wait. It won't be much
16 longer. He's pretty fast.

17 Why are you folks fighting about Carl Dasher and
18 Andrew Wilkin? I haven't read this, but I'm surprised to see
19 every day another dispute from you people.

20 MR. DROSSMAN: Well, your Honor, all of our
21 oppositions to certain of the relief or letters rogatory or
22 Walsh Act requests the defendants made. For the most part,
23 those oppositions were based on our understanding that the
24 discovery cutoff was May 1. And our position that foreign
25 depositions, so we filed those all before you ruled. We filed

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1 our oppositions before you ruled. Carl dasher is a separate
2 issue.

3 THE COURT: So Wilkinson is going to go away?

4 MR. DROSSMAN: I believe, Judge. If the rule is that
5 they have until July 1 to do whatever they want, then that's
6 the rule. And you know, I don't think we can -- our objection
7 was based on the timing, not on --

8 THE COURT: So Wilkinson is the same as the one I
9 ruled on.

10 MR. DROSSMAN: Sure.

11 THE COURT: Maybe I can just close that one.

12 MR. DROSSMAN: Right.

13 THE COURT: With respect to Dasher.

14 MR. DROSSMAN: With respect to Mr. Dasher, you know,
15 they have moved under the Walsh Act seeking permission. He is
16 a U.S. citizen living in London, I believe, seeking permission
17 to take his deposition. They did this before the Court reduced
18 their deposition number from 65 to 35. And, in our view,
19 Mr. Dasher is not a relevant actor. He was the chief financial
20 officer at SEI. During the time frame, he didn't have any
21 involvement in the investments. And he was several levels up
22 from the investments. We don't think that they have satisfied
23 what is required under the Walsh Act showing that there is some
24 sort of extraordinary need to take this guy's deposition. He
25 lives overseas. But they've dropped at least one deposition

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1 since the Court issued its order reducing the numbers. I'm not
2 sure if they intend to do that with Mr. Dasher. If so --

3 THE COURT: We're awaiting Morgan Stanley's reply.
4 Are you going to submit a reply brief on that one?

5 MR. ROUHANDEH: Yes, we are. On Wednesday.

6 But that just raised a question. And these are all
7 issues that I think we need to consider among all of the
8 defendants. Because your Honor did reduce the number of
9 depositions.

10 THE COURT: I did.

11 MR. ROUHANDEH: And there are some we're going to take
12 off the table, and others we're not.

13 THE COURT: So if you're going to take Dasher off for
14 any reason, I don't need to do extra work. It's not funny.
15 You don't understand. I don't have teams. I have a couple of
16 hundred cases. This one gets a disproportionate amount of my
17 time. I have some very heavy cases. I would like to know if I
18 don't have to do the work at the earliest possible time. Let's
19 assume if you submit the reply on Wednesday, then you're
20 sticking with Dasher. But if you choose not to, you'll submit
21 letter saying, given everything, we are withdrawing that
22 request.

23 MR. ROUHANDEH: Okay. We'll do that.

24 THE COURT: Okay. So I can close Wilkinson, and
25 you'll let me know about Dasher.

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1 MR. ROUHANDEH: Thank you, your Honor.

2 THE COURT: Right? Okay.

3 MR. DROSSMAN: Your Honor, there maybe -- I don't know
4 if there are others pending. There is a whole slew; some in
5 front of special master, some in front of you depending on
6 whether they are asking for letters rogatory or simply noticing
7 depositions. But if there are others, other than Mr. Dasher,
8 any of their requests for letters rogatory, if we have opposed
9 them to date, they are all based on the discovery cutoff issue.

10 THE COURT: All were the same except Dasher. Maybe
11 you can write me a letter withdrawing the opposition to Mr. So
12 and So, and So and So, and So and So, so I know which ones I
13 can close.

14 MR. DROSSMAN: Sure.

15 THE COURT: All you have to do is look through your
16 oppositions, okay. Say give me your ruling on so and so. You
17 know. But defense has to be pretty careful about the numbers.

18 MR. DROSSMAN: Wilkinson may be the only other one.

19 THE COURT: All right. Maybe.

20 MS. SULLIVAN: There is one discrete Moody-specific
21 issue that we're hoping to spare the Court a letter-writing
22 campaign on. The deposition of Brian Clarkson, former Moody's
23 executive, who had nothing to do with the ratings at issue, his
24 deposition is currently scheduled for the end of next week. We
25 believe that his deposition should be limited to one day, as

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1 the Court has done with former employees of the defendants.

2 THE COURT: I think two-day depositions are ridiculous
3 all around. I think I read in one of the special masters
4 rulings today, he's giving two more days on some of these
5 30(b)(6) people for the plaintiff. I don't understand. There
6 is nothing good lawyers can't get done in seven hours. That's
7 why the federal rules said so. I don't understand this. Two
8 days is a waste of time. People are wasting time. Time is
9 money. Time is precious. And time is delay.

10 MS. SULLIVAN: Agreed. And I raised this with
11 plaintiff's counsel just briefly before the hearing. We're
12 happy to give them the full seven hours.

13 THE COURT: Well, how are you getting two days for
14 these 30(b)(6) people that I read this morning. Why? It's a
15 second bite. You're redoing the same people, right. And the
16 special master writes don't go over the same ground, it better
17 be a different issue, that you were not allowed to take before
18 because there were class issues, now there's merits. Okay, so
19 he said, yes, you can have them. Did he say two days?

20 MR. ROUHANDEH: Those might in fact be one day. But
21 for other 30(b)(6) depositions for the 12 plaintiffs, there I
22 think it is going to be two days because we have -- especially
23 if we're limited, we don't take fact depositions, there are
24 many, many topics and it has taken -- they took --

25 THE COURT: Are you limited to one day on those second

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1 round 30(b)(6), the same people that you took once before when
2 you were limited to class certificate issues and now he says
3 there are distinctions, there are new issues? Those should be
4 limited to one day.

5 MR. ROUHANDEH: That's fine with us.

6 THE COURT: You can't ask --

7 MR. ROUHANDEH: Yeah, that's fine.

8 THE COURT: -- Brooks to be limited to one day, when
9 he takes, whoever, Clarkson, and then stand there and want two
10 days, which are unnecessary on round two. So, you agree to be
11 limited to one day on the people you are deposing for the
12 second time.

13 MR. ROUHANDEH: That's fine, your Honor.

14 THE COURT: That's one day. Now, about you with this
15 guy, Clarkson.

16 MR. DROSSMAN: Sure. Your Honor, Mr. Clarkson is the
17 person they pointed to and said don't take Mr. McDaniel's
18 deposition, take Mr. Clarkson's deposition. He can tell you
19 everything that Mr. McDaniel who doesn't want to sit for a
20 deposition, everything that Mr. McDaniel knows, Mr. Clarkson
21 knows. We have a lot of documents for him, Judge.

22 I do want to just briefly tell the Court that they --
23 they raised this issue with another witness previously with the
24 special master. And we've said -- the way this evolved, your
25 Honor, is that we began taking one day depositions in this

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1 case. Citing your standing order, the defendants began -- they
2 said we want two-day depositions of the plaintiffs. And so
3 they took two-day depositions. And throughout most of this
4 case, two-day depositions were the norm. Then after awhile,
5 they started objecting and saying there should only be one day.
6 We're fine with one day going forward. We are fine with two
7 days going forward. Just that the order, the rule, is
8 reciprocal. So we just want -- you know, we want parody in
9 this. And they have not agreed to do it. And they have said,
10 well, you have taken most of your depositions, so we should get
11 two days going forward. But for any remaining depositions, no matter
12 how important they are or how you care about them, they should
13 only be one day for you.

14 So I guess, Judge, we're fine either way. We would
15 prefer to have two days for Mr. Clarkson. We have a lot
16 material to go through with him. But if we're getting limited,
17 time after time, to one day on these depositions, then we feel
18 like they should have the same limitation.

19 THE COURT: Theoretically that sounds good, everybody
20 plays by the same rules. But all witnesses are not the same
21 that's why I have a special master. Because you might have to
22 evaluate one witness as different than another witness. And
23 you shouldn't say, well, if all are two, then I want two. I
24 mean that's childish. Some just don't need two. And some may
25 need two. And it sounds like instead of just saying I want

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1 what they get on every single witness, I'm willing to evaluate
2 this case by case. I just said those re-dos or do-overs on
3 plaintiffs already been deposed must be one, he says, okay.
4 You said so it has to be. But for the new ones, we have so
5 many topics, well that's what you're saying about Clarkson.

6 MS. SULLIVAN: The key distinction in your ruling on
7 the one-day depositions. Depositions have been limited to one
8 day, in contrast to plaintiff, the depositions plaintiffs have
9 taken which have gone two days of party deponents. Gail Scott,
10 former S&P employee. Clarkson same boat, former Moody's
11 executive, they have no basis of taking, of a nonparty, two
12 days worth of deposition.

13 THE COURT: Well, you're at risk. Seems to me if they
14 can prove up that they still need McDaniel, because you didn't
15 give them what they need with Clarkson, then they're going to
16 waste time re-asking for McDaniel, and we're all going to have
17 to look at that again.

18 MS. SULLIVAN: Fair enough.

19 THE COURT: If you give them what they need from
20 Clarkson, they aren't going to ask for McDaniel because they
21 would have gotten the answers.

22 MS. SULLIVAN: Well, having seen both Mr. Drossman and
23 Brooks in action, I have no doubt they can get what they need
24 in one day from Mr. Clarkson.

25 THE COURT: I think that was a compliment. Used to

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1 her advantage, but it was a compliment.

2 I really do think good lawyers can get whatever they
3 need during one day, as long as there is not wasted objections
4 and waste of time and defense lawyer making sure you don't
5 really get to use your time.

6 Where is this guy, is he in New York?

7 MR. DROSSMAN: New York.

8 MS. SULLIVAN: Right here, New York.

9 THE COURT: So, it's no real burden, I suppose. It's
10 all silliness as to whether it is one day or two days. It
11 should be no more than two days, obviously, with best efforts
12 for one day. But if at the end of seven hours he is tired and
13 doesn't want to keep going, I guess they can have a part of the
14 second day until they're done. But I would ask everybody to
15 try hard to finish it in one day. So I would treat it as
16 aspirational, not a ruling. This is the way to avoid McDaniel,
17 which is what you want to avoid. Then let's get it done. I
18 would ask you to try to get it done one day. Even be an eight
19 hour day, or even a nine hour day. If you can't get it done,
20 I'll let you go into a second day, as long as you don't abuse
21 it. Not going to make it a one-day cutoff for him.

22 MR. DROSSMAN: Thank you, your Honor.

23 One last dispute that's arisen. And rather than write
24 letters and take it up the chain.

25 THE COURT: Yes. Terrible, terrible.

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1 MR. DROSSMAN: Among the witnesses that the defendants
2 are now seeking to depose that they had not really during this
3 entire period is Chaney. Chaney is obviously a big player.
4 Apparently Chaney has agreed to sit in London to provide a
5 30(b)(6) witness in London to sit for a deposition. And we
6 expect that this deposition probably will be trial testimony.
7 It's in London. And we've told them, there are a lot of
8 documents that Chaney has produced in this case. They have
9 noticed --

10 THE COURT: Chaney is an entity, not a person.

11 MR. DROSSMAN: 30(b)(6) witness.

12 THE COURT: Okay.

13 MR. DROSSMAN: There are a lot of documents.

14 THE COURT: And it will be taken in London?

15 MR. DROSSMAN: Going to be taken in London. And we've
16 asked the defendants that we get half the time for Chaney.
17 It's a deposition that -- if it's going to -- if Chaney is
18 going to be in this case we need to have --

19 THE COURT: When you say "half the time," you mean
20 defendants are deposing him?

21 MR. DROSSMAN: The defendants have noticed Chaney's
22 deposition for two days. And we would like to take a day of
23 testimony from Chaney.

24 THE COURT: So you are saying you want half as much as
25 the defendants get. If they question this person for two solid

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1 days, you want a third day. Is that --

2 MR. DROSSMAN: Right. I mean my thinking was that
3 perhaps everybody could -- we think we can get our examination
4 done in a day or less.

5 THE COURT: Yes.

6 MR. DROSSMAN: But we want to have that opportunity.
7 And because Chaney is sitting under, my understanding,
8 voluntarily.

9 THE COURT: I understand. So you want a day.

10 MR. DROSSMAN: Yes, we do.

11 THE COURT: Whatever they take, whether they take one
12 or two, you still want a day.

13 MR. DROSSMAN: That's right.

14 THE COURT: Who objects to that?

15 MR. ROUHANDEH: That's fine. As long as we get two
16 days. I mean there were discussions on this deposition with
17 Chaney, setting the date. And then they decided not to take
18 it. And when they found out we were taking it, suddenly now
19 they want to limit us to one day and they get one day. We
20 think it is an important deposition.

21 THE COURT: It is important. Both parties have
22 questions to ask. I think droning on for two days reveals a
23 certain lack of ability to question a witness. It doesn't take
24 two days. It's my view, I told you, good lawyers can get any
25 deposition done in seven hours or less. That's my view. But

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1 since I think you're good lawyers, you should be able to get it
2 done in seven hours. I don't understand, maybe you're not
3 doing the questioning. Less competent counsel is, I don't
4 know. I believe you can get it done in seven hours if you want
5 to. However, since you have been dealing with two days all
6 along, I won't limit you. But you can have your day.

7 MR. DROSSMAN: Thank you.

8 THE COURT: It's only fair.

9 So that's that. So we have a bit of a schedule, which
10 we'll try to put in writing. And I would see you, I hope it
11 would be at the motion stage, in October, ready for premotion
12 conference, to see if the defense really thinks this is a
13 motion case, in all respects or partial.

14 MR. ROUHANDEH: Okay.

15 MR. DROSSMAN: Okay.

16 MR. ROUHANDEH: Set a date or --

17 THE COURT: That's what I am thinking. Not that I
18 expect to get away without seeing you between now and then,
19 because I'm sure you'll find discovery disputes or appeals or
20 something to bring to my attention. But I will still set a
21 date.

22 I know you all travel, but it is still -- the best day
23 for me would be Friday, October 14th, at 4:30 be all right or
24 not. I know you don't like Friday.

25 MR. DROSSMAN: Fine for us, your Honor.

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1 THE COURT: All right. With that much notice, maybe
2 you can turn it into a good weekend here. So October 14th at
3 4:30, in the hope that this would be a premotion conference so
4 we can actually discuss the merits a little.

5 MR. DROSSMAN: Is it anticipated that we would have an
6 exchange of letters --

7 THE COURT: Absolutely. I have individual rules.
8 Surely all those lawyers know how to find them. That would be
9 pathetic if they don't know how to find individual rules.

10 So Therefore you do, don't you, defense lawyers?

11 MR. ROUHANDEH: Absolutely.

12 THE COURT: Yeah, they know how. They write the
13 moving letter, and you respond, all that. My rules say when in
14 advance of the conference.

15 If, for some shocking reason, they decide there is no
16 motion at all, we would still have to conference and discuss
17 what happens next.

18 Are you folks discussing settlement anywhere? I have
19 not asked that question in ages. Is there any effort?

20 MR. BROOKS: There hasn't been, your Honor.

21 THE COURT: In complex financial cases, sometimes
22 people think it is worth paying one of the select group of
23 mediators out there who do a lot of complex financial cases.
24 Or we can provide you free help with either a magistrate judge
25 or a hit-or-miss court mediation program. So there is three

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1 options. Somebody you get off the list here that you don't
2 know and that's free. Or a magistrate judge. Or you go out
3 and hire one in that group that everybody knows who they are
4 and they make a lot of money and they help people settle
5 financial cases.

6 Which of those three do you think might be good in
7 this case.

8 MR. BROOKS: We have used paid mediators in the past.
9 And we have had, obviously, a lot of success with paid
10 mediators. I think the predicate, though, is that you have to
11 have both sides that want to reach a resolution and that are
12 interested in discussing settlement. And while we're happy to
13 sit down and we would be glad to talk settlement, I don't think
14 the defendants share that interest. So I'm not sure that any
15 of those three options would make sense when you don't have a
16 willing party.

17 THE COURT: Well, that may be right. It may change as
18 discovery winds up, or after the motions stage, I don't know.

19 At this point, has Mr. Drossman correctly assessed
20 things, that there is not a lot of interest in working with a
21 mediator in helping to try to reach a resolution?

22 MR. ROUHANDEH: I think that's true at this point,
23 yes.

24 THE COURT: Well, all right then. We can grind along
25 with discovery and motion practice. And I will continue to ask

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1 that question. But Mr. Rouhandeh says this group is not a
2 willing partner right now.

3 Okay. All right.

4 MR. ROUHANDEH: Thank you, your Honor.

5 MR. DROSSMAN: Thank you.

6 THE COURT: Maybe I will or won't see you before
7 October, we don't know.

8 ALL: Thank you.

9 (Adjourned)

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